

BUSINESS MEETING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 20, 2003

10:00 a.m.

Reported by  
Peter Petty  
Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S

COMMISSION MEMBERS PRESENT

Chairman William J. Keese

James D. Boyd, Commissioner

John L. Geesman, Commissioner

Robert Pernell, Commissioner

Ex-Officio Member Margret Kim

STAFF PRESENT

Jonathan Blees, Assistant Chief Counsel

Bob Therkelsen, Executive Director

Roberta Mendonca, Public Advisor

Song Her, acting Secretariat

Gabriel Herrera, Senior Staff Counsel

Pat Perez, Manager, Transportation Fuel Supply and  
Demand Office

Glen Sharp, Demand Analysis Office

Shahid Chaudhry, Efficiency Division

Chris Scruton, PIERS Building Group

Major Williams, Hearing Officer, East Altamont  
Energy Center

Lisa De Carlo, staff Counsel

Jennifer Tachera, Chief Counsel's Office

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

A P P E A R A N C E S (continued)

ALSO PRESENT

Greggory Wheatland, Ellison, Schneider & Harris  
LLP (for Calpine)

Steve Hill, BAQMD

Brian Bunger, BAQMD (via telephone)

Jim Swaney, San Joaquin Valley APCD

Michael Hatfield, Calpine

Gary Rubenstein, Sierra Research

PUBLIC COMMENT

Janie Painter, Save Medicine Lake Coalition  
(via telephone)

Peggy Risch, Mount Shasta Bio-Regional Ecology  
Center (via telephone)

Bob Sarvey, citizen of Tracy

Michael Boyd, CARE

Wes Huffman, Tracy City Council

Irene Sundberg, Tracy Planning Commission

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1 P R O C E E D I N G S

2 10:00 a.m.

3 CHAIRPERSON KEESE: Okay, I call this  
4 meeting to order. Commissioner Boyd, will you  
5 lead us in the pledge, please?

6 (Whereupon, the Pledge of Allegiance was  
7 recited in unison.)

8 CHAIRPERSON KEESE: Thank you, everyone.  
9 We'll take up the consent calendar first. That  
10 is, we will take up the consent calendar items A  
11 through D. Do I have a motion on the consent  
12 calendar?

13 COMMISSIONER GEESMAN: I move the  
14 consent calendar.

15 (Thereupon, the motion was made.)

16 COMMISSIONER PERNELL: Second.

17 (Thereupon, the motion was seconded.)

18 CHAIRPERSON KEESE: Motion Geesman,  
19 Second, Pernell.

20 All in favor?

21 (Ayes.)

22 Opposed? Adopted. Item 2 is over until  
23 our meeting on September 3rd. As long as I'm  
24 mentioning that, and for the benefit of the  
25 audience, we will be having a special meeting on

1 the 9th of September to hear a siting case or two.

2 And we will not have a meeting on the  
3 17th of September. Our next meeting after the 9th  
4 will be on October 8th.

5 COMMISSIONER BOYD: You want to identify  
6 the siting cases for the benefit of the public?

7 CHAIRPERSON KEESE: If Mr. Therkelson is  
8 aware of which siting cases have -- Mr.  
9 Therkelson, do you know which --?

10 MR. THERKELSON: I believe we're --  
11 John, which ones will we have up there? Pico?

12 CHAIRPERSON KEESE: Just one?

13 MR. THERKELSON: That's the only one at  
14 this time. We may have another one.

15 CHAIRPERSON KEESE: We may have another  
16 one. So the Pico case will be up on the 9th, and  
17 we may have a second.

18 COMMISSIONER BOYD: I was just reminded,  
19 Cosumnes will be up at that time.

20 CHAIRPERSON KEESE: Cosumnes will be up  
21 at that time. Thank you.

22 Item 3, Gulf Coast To California  
23 Pipeline Feasibility Study. Possible adoption of  
24 the Committee Report Gulf Coast to California  
25 Pipeline Feasibility Study.

1           MR. PEREZ: Thank you, Chairman Keese  
2   and fellow Commissioners. My name is Pat Perez,  
3   Manager of the Transportation Fuel Supply and  
4   Demand Office. We have a report before you today  
5   for adoption.

6           A report that is due to the Attorney  
7   General, and to the California Legislature, where  
8   we were asked to look at the feasibility of  
9   constructing and operating additional pipeline  
10   capacity from the Gulf Coast to California to  
11   deliver gasoline and other blend stocks.

12          The key finding of that study is that,  
13   at this time, we do not believe that it's feasible  
14   from a cost perspective, and secondly because of  
15   the lack of available products from the U.S. Gulf  
16   Coast that is needed to flow from the east to the  
17   west.

18          So, with that I'd also like to point out  
19   that this report was the subject of a hearing in  
20   March 2002. We did not receive any opposition or  
21   comments on the report since that time.

22          We have modified the report to include  
23   updates on the proposed Longhorn Pipeline in Texas  
24   that is now on hold, and will probably remain on  
25   hold until perhaps the summer of 2004.

1           A couple of other recommendations that  
2   are in the report that we're seeking is that we  
3   asked the Legislature to permit us to look at some  
4   of the petroleum product demand in the states of  
5   Arizona and Nevada to ensure that we have a better  
6   handle on their future demand and what impacts  
7   that may have on the delivering of products from  
8   California to the east.

9           COMMISSIONER BOYD: I think you had a  
10  real test case this week.

11          MR. PEREZ: Yes we did.

12          CHAIRPERSON KEESE: Very timely. Do I  
13  have a motion for adoption? Motion by Boyd,  
14  Second by Geesman.

15          (Thereupon, the motion was made and  
16  seconded.)

17          Any further discussion? All in favor?

18          (Ayes)

19          Opposed? Adopted four to nothing.

20          Thank you.

21          Item 4, Xenergy, Inc. possible approval  
22  of an amendment to Contract 300-00-004 to provide  
23  a no-cost time extension, extending the  
24  Residential Appliance Saturation Survey contract  
25  for about four months.



1           MR. SHARP: Thank you. My name is Glen  
2 Sharp of the Demand Analysis Office of the Energy  
3 Commission. I'm requesting a contract amendment  
4 of two parts.

5           The first is the no-cost time extension  
6 from February 15th, 2004, to June 20, 2004. And  
7 the second is a change in the retention factor  
8 from 25 percent to 10 percent, which is the  
9 default for contracts of this type.

10           25 percent was inadvertently written  
11 into the contract, and not noticed by either  
12 myself or the contractor until the first payment  
13 on an invoice was made.

14           CHAIRPERSON KEESE: Thank you. Do I  
15 have a motion?

16           COMMISSIONER PERNELL: Yes, Mr.  
17 Chairman, I will move.

18           (Thereupon the motion was moved.)

19           CHAIRPERSON KEESE: Motion, Commissioner  
20 Pernell.

21           COMMISSIONER GEESMAN: Second.

22           CHAIRPERSON KEESE: Second, Commissioner  
23 Geesman.

24           (Thereupon, the motion was seconded.)

25           All in favor?

1 (Ayes.)

2 Opposed? Adopted four to nothing.

3 MR. SHARP: Thank you.

4 CHAIRPERSON KEESE: Thank you. Item 5,  
5 Southern California Edison possible approval of  
6 contract 500-03-001 for \$964,074 to develop and  
7 demonstrate portable lightweight digital,  
8 automated system for accurate control and  
9 monitoring of oxygen transfer efficiency in the  
10 wastewater treatment industry.

11 MR. CHAUDHRY: Good morning, Mr.  
12 Chairman and fellow Commissioners. My name is  
13 Shahid Chaudhry, I work for the Efficiency  
14 Division.

15 I'm here to request for a possible  
16 approval of \$964,000 to develop and demonstrate a  
17 portable, lightweight, digital automated system  
18 for the accurate control and monitoring of oxygen  
19 transfer efficiency in the wastewater treatment  
20 industry.

21 According to the state Water Resources  
22 Control Board, there are about 800 wastewater  
23 treatment facilities in California, treating about  
24 3500 million gallons a day. And half of this  
25 wastewater is treated through a process known as

1 activated sludge process.

2           However, with the diffusers we use in  
3 this process there is no exact and accurate way to  
4 measure the oxygen transfer efficiency, so this  
5 project will come up and demonstrate a technology  
6 and equipment which is lightweight and easy to  
7 use, and it is estimated that if this equipment is  
8 developed and employed in the activities of such  
9 treatment processes this will save about 177  
10 million kilowatt hours per year just in the  
11 wastewater industry.

12           CHAIRPERSON KEESE: Thank you. Can I  
13 have a motion?

14           COMMISSIONER PERNELL: Mr. Chairman, I  
15 would move this item. I have no questions.  
16 (Thereupon, the motion was moved.)

17           CHAIRPERSON KEESE: Thank you, Mr.  
18 Pernell.

19           COMMISSIONER BOYD: Second.

20           CHAIRPERSON KEESE: Second, Commissioner  
21 Boyd. Any other questions?

22           All in favor?

23           (Ayes.)

24           Opposed? Adopted four to nothing.

25           CHAIRPERSON KEESE: Item 6. Southern

1 California Edison, possible approval of Contract  
2 500-03-002 for -- I will give you an edited number  
3 -- \$1,985,897, to develop and facilitate market  
4 availability of cost-effective package and split-  
5 system air conditioners.

6 MR. SCRUTON: Good morning,  
7 Commissioners. My name is Chris Scruton, I'm with  
8 the PIER Buildings Group. Staff requests your  
9 approval of this \$1.986 million contract with  
10 Southern California Edison.

11 The purpose of this contract is to  
12 develop more efficient residential and small  
13 commercial air conditioning equipment that works  
14 better in hot, dry conditions. At present, even  
15 equipment with high seasonal efficiency ratings is  
16 not necessarily efficient in hot conditions,  
17 because that rating occurs at 82 degrees.

18 In addition, virtually all equipment  
19 sold is designed to do a significant amount of de-  
20 humidification, which also uses a lot of  
21 additional energy.

22 This project has three strengths. We're  
23 combining the best technical resources that we  
24 know of. Manufacturing and marketing expertise of  
25 existing manufacturers and major utility incentive

1 programs. And bringing them together we feel will  
2 have a good chance of making this a market  
3 reality.

4 The project has been reviewed and  
5 approved by the R&D Committee, and I'd be happy to  
6 answer any of your questions.

7 CHAIRPERSON KEESE: Thank you.

8 COMMISSIONER PERNELL: Mr. Chairman, I  
9 would move.

10 CHAIRPERSON KEESE: Motion by Pernell.  
11 (Thereupon, the motion was moved.)

12 COMMISSIONER GEESMAN: Second.

13 CHAIRPERSON KEESE: Second by Geesman.  
14 (Thereupon, the motion was seconded.)

15 All in favor?

16 (Ayes.) Adopted four to nothing. I do  
17 have one followup question here. This deals with  
18 EER standards?

19 MR. SCRUTON: Not really with the EER  
20 standards, no. The EER rating is 95 degrees, and  
21 we're actually not, we're not trying to change any  
22 of the EER ratings. We're actually not trying to  
23 change any of the issues that the ARI might have  
24 about requirements.

25 It's not really a regulatory program.

1 It's actually aimed at developing and making  
2 available in California equipment that's better  
3 suited for our climate. So it's more of a market-  
4 oriented program than a regulatory program.

5 CHAIRPERSON KEESE: Thank you. Item 7,  
6 Calpine Corporation, possible approval to move the  
7 project drilling site under an existing agreement  
8 with Calpine Corporation, from the Pumice Mine  
9 area to the Glass Mountain Known Geothermal  
10 Resource Area to the Telephone Flat area within  
11 the same KGRA.

12 We took this item up two weeks ago, and  
13 we put it over for re-referral to the Committee  
14 and report. I would ask Commissioner Geesman, can  
15 you give us a report of what the Committee  
16 clarified, or what input the Committee would like  
17 to give us?

18 COMMISSIONER GEESMAN: Certainly. We  
19 took this up at our last R&D Committee meeting.  
20 And both the staff, Calpine and BLM had provided  
21 information to us.

22 The Committee determined that the  
23 Program Opportunity Notice under which Calpine had  
24 originally received the award provided for the  
25 eligibility of either exploration or development

1 wells.

2           The Committee also determined that a  
3 change of location was expressly permitted under  
4 the funding agreement with Calpine, as long as  
5 it's approved in writing by the Commission's  
6 Project Manager.

7           BLM determined that, even with the  
8 change in location of the well, that Calpine would  
9 still be considered to be within the exploratory  
10 phase rather than the development phase.

11           And finally, we determined that Calpine  
12 does indeed have all of the necessary permits for  
13 the Telephone Flat prospect. So, none of the  
14 issues raised at the last business meeting, in our  
15 judgment, were pertinent to moving the award to  
16 the other well. And we would recommend approval  
17 of the item.

18           CHAIRPERSON KEESE: Thank you. Before I  
19 go to other individuals of the public who would  
20 like to speak to this issue, do any of the  
21 Commissioner's have any questions regarding this  
22 clarification?

23           Mr. Boyd, did you wish to speak to this  
24 issue? Michael Boyd.

25           MR. BOYD: Can I wait until other people

1 have a chance to speak?

2 CHAIRPERSON KEESE: You can defer if you  
3 like.

4 MR. BOYD: I don't want to pass up my  
5 turn, but --

6 CHAIRPERSON KEESE: Now, we generally  
7 take the people who were here first before the  
8 phone, but that's fine, you're welcome to defer.  
9 I do have two people on the phone.

10 We heard from Peggy Risch and Janie  
11 Painter at our last meeting. We're happy to hear  
12 from them again. Who do we have on the line?

13 MS. PAINTER: (via telephone) Janie  
14 Painter from the Save Medicine Lake Coalition.

15 CHAIRPERSON KEESE: Let me mention the  
16 parameters of our discussion today. We had a  
17 rather full discussion of this issue at our last  
18 Commission meeting. There were some questions  
19 that the Commission had, and therefore we referred  
20 it to Committee.

21 You've heard the response of the  
22 Committee. So if you have anything to add to what  
23 you told us at the last meeting, we'd be happy to  
24 hear it.

25 MS. PAINTER: Okay. Did you get my



1     comments that I mailed in to Elaine Sison-  
2     Lebrilla?

3             CHAIRPERSON KEESE:   Yes, we did.

4             MS. PAINTER:   Okay.   One thing I do want  
5     to add to it.   I do have the permit in front of  
6     me, for well pad 1618.   And in those permits --  
7     well, 1618 is only permitted for development only.  
8     And exploration is never mentioned in the Sundry  
9     Notice or the drilling permit, only development.

10            And I feel that you're moving an  
11   exploration subsidy into a development area, and I  
12   don't agree with your finding that they're the  
13   same.   And I think that this should be, the  
14   subsidy should be denied for that reason alone, if  
15   not for all the other reasons that we brought up  
16   in our comments.   Thank you.

17            CHAIRPERSON KEESE:   Thank you.   Peggy  
18   Risch?

19            MS. RISCH:   Yes, can you hear me?

20            CHAIRPERSON KEESE:   Yes, we can.

21            MS. RISCH:   Can you still hear me?

22            CHAIRPERSON KEESE:   Yes, we can.   Now we  
23   really heard you.

24            MS. RISCH:   Hello?

25            CHAIRPERSON KEESE:   Yes.

1 MS. RISCH: Okay, I'm very sorry.  
2 Trying to get my phones hooked up here. Anyway, I  
3 appreciate the opportunity to speak. And what I  
4 would like to say is to ask the Commissioners if  
5 the Committee did receive our comments of August  
6 11th, because I didn't hear Commissioner Geesman  
7 mention that in the meeting.

8 He seemed to mention the staff, Calpine,  
9 and the BLM, and I'm a little concerned that  
10 basically the public and our comments were -- and  
11 our ability to participate in that meeting -- that  
12 we weren't noticed on that, nor were we able to  
13 participate.

14 And that means that the discussion, as  
15 it related to our comments, were excluded from  
16 that meeting. And they represent a different  
17 perspective than what Calpine represents.

18 And they are clearly conflicting with  
19 the BLM agency, which, as the Commissioners know,  
20 are part of a litigation and lawsuit filed by  
21 Earth Justice, which represents us on this issue.

22 And therefore, I have great concerns  
23 that we weren't part of this meeting between the  
24 staff, Calpine, and the BLM. Because, as Ms.  
25 Janie Painter pointed out, that I believe Sean

1 Haggerty, in representing the BLM, is really  
2 representing to the CEC something that doesn't  
3 exist.

4 And that is, those permits and those  
5 conditions of approval for that proposal in this  
6 new area, Telephone Flat, is development.  
7 Irregardless of what he may think, the Bureau of  
8 Land Management, the Department of the Interior,  
9 Rebecca Watson, signed those permits as a  
10 development permit.

11 And thus, all the conditions of that  
12 record of decision for the Telephone Flat  
13 development project, were required. So, Rebecca  
14 Watson, the Department of Interior, those are her  
15 signatures on those permits, and her conditions of  
16 approval, and I think they override, supersede,  
17 whatever Sean Haggerty might have told the  
18 Commission.

19 And therefore I'm really concerned that  
20 we were excluded from that meeting and did not  
21 have the ability to voice this to the  
22 Commissioners.

23 CHAIRPERSON KEESE: One moment, please.  
24 Commissioner Geesman?

25 COMMISSIONER GEESMAN: We've reviewed

1 all of the written materials submitted by the  
2 parties, and also reviewed the transcript from the  
3 last business meeting to make certain that there  
4 were no points that they had raised that we were  
5 not considering.

6 And we didn't feel that there was any  
7 new information added after the business meeting  
8 that was pertinent to our determination.

9 I would remind the Commission of the  
10 first point that I made, that the program  
11 opportunity notice under which Calpine received  
12 the original reward permitted project that  
13 involved either exploration or development.

14 So the question as to whether or not  
15 there's been a shift from exploration to  
16 development wasn't really pertinent. And again,  
17 BLM considers the project to still be within an  
18 exploratory phase, but under the original program  
19 opportunity notice that Calpine received the  
20 award, that's not a pertinent question.

21 MS. RISCH: May I -- I wasn't quite  
22 finished, may I?

23 CHAIRPERSON KEESE: Yes.

24 MS. RISCH: You know, Commissioner  
25 Geesman is talking about an opportunity notice

1 that went out for the GRD award last fall. And  
2 the notice is one thing, however, Calpine's  
3 application was clearly -- and this is what we  
4 expressed -- about a different project.

5           It was scored for a project that was  
6 located in a different area within the Glass  
7 Mountain area. It was located three miles away,  
8 which Calpine called a different, unproven  
9 resource area. And that scoring for that  
10 application is such that what they're proposing  
11 clearly alters the scope and intent of what  
12 they're proposing now.

13           And I really do not understand how the  
14 Commissioners can overlook, nor do I understand  
15 how the Committee can overlook, this very  
16 important point, that it was a different project  
17 in scope.

18           Now I hear what you're saying about the  
19 notice, but what Calpine's application was, was  
20 not about what they're proposing in the Telephone  
21 Flat area. As we have said, it's a different  
22 project, it's a different scope. And as such, the  
23 application manual and the guidelines for that  
24 award clearly stated that you cannot change.

25           You can make changes in the process of

1 their different budgets, it requires the  
2 Commission's approval, but it cannot change the  
3 scope. This is a change of scope, and as such --

4 CHAIRPERSON KEESE: Thank you, Ms.  
5 Risch, the Commission and the Committee are aware  
6 of your position. Appreciate your testimony. Mr.  
7 Boyd?

8 MR. BOYD: Hello, my name is Mike Boyd,  
9 and I'm the President of Californians for  
10 Renewable Energy, CARE. And CARE has several  
11 members in the Medicine Lake/Highland area.

12 And what I've provided you today is a  
13 copy of a news article from the San Francisco  
14 chronicle, titled "Calpine contractor dies in  
15 geothermal blast."

16 This article reports that this is the  
17 second death in the last four months at the geyser  
18 facility that Calpine has. I've also provided you  
19 a copy of a letter that I have from the Bay Area  
20 Air Quality Management District, and attached to  
21 that is 57 notices of violation for Calpine's Los  
22 Medanos and Delta Energy Centers in Pittsburg,  
23 California.

24 Both projects that were permitted by the  
25 California Energy Commission. Our concern here is

1     that Calpine -- basically what you're doing is  
2     you're bending the rules for Calpine once again,  
3     and what you're doing is -- as the other speakers  
4     who've spoken before, you've changed the scope of  
5     the project.

6             And you're doing it for a Applicant  
7     who's clearly out of compliance with the  
8     conditions that you put on previous projects that  
9     you've approved, and plus they're obviously  
10    willing to risk the health and safety of their own  
11    workers.

12            How are we supposed to trust that  
13    they're going to protect the public's health and  
14    safety when they have such a poor track record  
15    with compliance with your conditions of approval,  
16    and basically with compliance for basic health and  
17    safety for their workers.

18            So the issue is this, how can you do  
19    this when you know they're out of compliance, when  
20    you know they don't have a schedule of compliance,  
21    and you know there's been two deaths at another  
22    geothermal facility that they have?

23            For the life of me I don't see how you  
24    can even consider this, until you establish some  
25    kind of mechanism to ensure that they're going to

1     comply in the future with conditions that you put  
2     on projects that you approve.

3             And as I said earlier, before, about the  
4     Telephone Flats -- it's been over a year ago. The  
5     fact that you're doing this I believe is an act of  
6     intentional discrimination against the native  
7     peoples that live in this area. And you're  
8     desecrating their sacred lands by doing this.

9             And that's an issue -- if you do decide  
10    to go forward with -- certainly we will pursue  
11    with Department of Energy's Office of Civil Rights  
12    and Diversity. And we'll do whatever we can to  
13    help these members in Medicine Lake to ensure  
14    their rights are protected, and their quality of  
15    life is protected.

16            So, basically, in conclusion, we're  
17    asking that you deny this at this time until they  
18    establish that they're going to comply with the  
19    conditions that you put on projects you approve.  
20    Thank you.

21            CHAIRPERSON KEESE: Thank you. It's an  
22    interesting twist on the development of renewable  
23    resources.

24            COMMISSIONER GEESMAN: Mr. Chairman?

25            CHAIRPERSON KEESE: Commissioner



1     Geesman.

2                 COMMISSIONER GEESMAN:   Just to  
3     reiterate, the Committee did not find a change of  
4     scope for the project.  We found it to be a change  
5     in location.  That the original notice of program  
6     opportunity, identified either exploration or  
7     development to be permissible.

8                 That changes in location are explicitly  
9     permitted by the funding agreement with Calpine,  
10    as long as they're approved in writing by the  
11    Commission Project Manager.  And that all  
12    necessary permits for the Telephone Flat prospect  
13    have been received.

14                I would also add, although I'm not  
15    familiar with the material that Mr. Boyd just  
16    handed out, that the consequences of non-  
17    compliance are severe.  And if non-compliance on a  
18    project that the Commission has licensed has been  
19    detected by the local air district, which I think  
20    is the determination of the material distributed,  
21    those consequences will in fact flow.

22                That's the way the process is supposed  
23    to work.  And I would move the item.

24                CHAIRPERSON KEESE:  Motion, Commissioner  
25    Geesman.

1 (Thereupon, the motion was moved.)

2 COMMISSIONER PERNELL: Second.

3 CHAIRPERSON KEESE: Second, Commissioner  
4 Pernell.

5 (Thereupon, the motion was seconded.)

6 Any questions from the Commission? I  
7 believe we heard full testimony two weeks ago, and  
8 it's been amplified now.

9 All in favor?

10 (Ayes.)

11 Opposed? Adopted four to nothing. Thank  
12 you.

13 Item 8, East Altamont Energy Center,  
14 consideration and possible approval of the revised  
15 Presiding Member's Proposed Decision on the  
16 Application for Certification of East Altamont  
17 Energy Center.

18 MR. WILLIAMS: Thank you. Mr. Chairman,  
19 members of the Commission, good morning. I'm  
20 Major Williams, and I'm the hearing officer on the  
21 East Altamont Energy Center facility for the EAEC  
22 matter.

23 The EAEC Committee issued a PMPD, a  
24 revised PMPD, and several errata to the revised  
25 PMPD. In addition, the Committee conducted

1 several Committee Conferences in the City of  
2 Tracy, and has thoroughly reviewed the entire  
3 record in preparing its recommendations.

4 On July 23rd, 2003, this item was  
5 brought before the full Commission, as it is this  
6 meeting, for approval. At that business meeting  
7 certain topics of disagreement were voiced by  
8 staff, Applicant, and several of our Intervenors.

9 The Commission decided to put the item  
10 over to a future business meeting, and remanded  
11 the EAEC Application to the Committee for  
12 resolution. At that time Mr. Wheatland,  
13 Applicant's attorney, suggested that a workshop be  
14 held to work out remaining issues.

15 That suggestion was taken under  
16 advisement by the Committee. Since that time the  
17 Committee has reviewed the record, and those areas  
18 of pending disagreement. Mr. Wheatland's  
19 suggestion for a workshop was not acted upon.  
20 Instead, the issues were reviewed and resolved by  
21 the Committee.

22 The Committee has prepared and issued a  
23 supplementary errata to the revised Presiding  
24 Member's Proposed Decision. That supplemental  
25 errata was issued on August 8, 2003.

1           Today the Committee asks the full  
2   Commission to approve the revised Presiding  
3   Member's Proposed Decision, as modified by the  
4   errata. Thank you, Mr. Chairman.

5           CHAIRPERSON KEESE: Thank you, Major.  
6   This is a complicated item, and I'm going to ask  
7   for the patience and understanding of all the  
8   parties, the public, and my fellow Commissioners,  
9   as we go through the steps we have to go through  
10  here.

11           Before we consider the substantive  
12  issues, the Commission needs to address four  
13  procedural matters. They are first, the status of  
14  Intervenors in the proceeding; second, a so-called  
15  demand concerning the state's Bagley-Keene Open  
16  Meeting Act, and a document submitted by  
17  Intervenor CARE, which is represented by Michael  
18  Boyd today.

19           Third, another allegation by Intervenor  
20  CARE that there was not ten days notice of this  
21  hearing today, in conjunction with which we can  
22  consider a potential appeal of Intervenor Robert  
23  Sarvey's motion that this hearing be postponed;  
24  and fourth, the affect of alleged violations of  
25  the air quality laws by other facilities owned by

1 the Applicant, an issue that was raised by Mr.  
2 Boyd in the previous issue.

3 We'll handle these matters one at a  
4 time. First, I'd like to clarify the status of  
5 Intervenor, which I referred to at the July 23rd  
6 Business Meeting in a shorthand manner. I have  
7 reviewed the transcript. There was an indication  
8 that I suggested that Mr. Sarvey is no longer an  
9 Intervenor in this proceeding.

10 That was not correct, or my intention.  
11 What I meant to convey by the remark is that the  
12 proceedings before the full Commission, on July  
13 23rd and today, are different in nature from  
14 committee hearings. And Mr. Sarvey's role, like  
15 every party, including Applicant and staff, is  
16 therefore also different.

17 In Committee hearings witnesses present  
18 evidence and are cross-examined. In other words,  
19 the factual record is created. And if the issues  
20 are complex, the proceedings go on for days.

21 When the Committee submits the matter to  
22 the full Commission -- July 23rd and today -- the  
23 factual record has generally been completed, and  
24 parties such as Mr. Sarvey are limited to making  
25 arguments based on the record.

1           Usually there is no new evidence  
2   presented, and no cross-examination or other  
3   questioning of other parties.

4           In addition, although Intervenors, like  
5   Mr. Sarvey, have every right to argue their points  
6   to the full Commission, based on the record we  
7   have developed in the Committee, we need them to  
8   be succinct, and to focus on the issues they  
9   believe the full Commission should consider as it  
10   decides whether to support the Committee's revised  
11   Proposed Decision.

12           To summarize then, I did not mean to  
13   suggest that Mr. Sarvey was no longer a party to  
14   this proceeding, only that he must argue from the  
15   record here rather than asking questions of other  
16   participants. And that we need to set reasonable  
17   time limits on the statements of all parties.

18           Now the next matter concerns Intervenor  
19   CARE's so-called demand that the Commission  
20   correct violations of the Bagley-Keene Open  
21   Meeting Act. There are actually two allegations  
22   here, but we will consider one of them in the  
23   context of another matter which has been raised by  
24   Intervenor Robert Sarvey.

25           At this time we will consider the

1 allegation of Intervenor CARE, represented by  
2 Michael Boyd, that the Commission held an illegal,  
3 unnoticed meeting at which action concerning East  
4 Altamont was taken.

5 That allegation was raised in a document  
6 that was docketed on August 12, 2003. The  
7 allegation results from the fact that, as a result  
8 of the July 23rd business meeting, the Committee  
9 further considered certain issues, and then issued  
10 the supplemental errata on the RPMD.

11 CARE asserts that the supplemental  
12 errata was the result of an illegal, unnoticed  
13 meeting. In fact, there was no such meeting. The  
14 Committee simply proceeded in the normal course of  
15 business. It heard comments, it considered them,  
16 and it took appropriate action.

17 Therefore, the Committee, which treated  
18 CARE's demand as a motion, denied the motion on  
19 August 15. On August 18 CARE filed an appeal of  
20 the Committee's ruling to the full Commission.

21 We therefore should rule on that appeal  
22 now, and we'll first hear from Mr. Boyd, if he  
23 wishes to speak, and then from the Applicant's  
24 staff and other parties.

25 I'd ask everyone to please confine your

1 remarks to three minutes, and do not repeat what  
2 you have submitted in writing. Mr. Boyd?

3 MR. BOYD: First, for clarification,  
4 we're just addressing the purported subsequent  
5 meeting after the 23rd, we're not addressing the  
6 issue of the ten days' notice for the meeting  
7 today?

8 CHAIRPERSON KEESE: No, we're going to  
9 take that up separately. This is the purported  
10 meeting which was referenced, based on a newspaper  
11 article somewhere.

12 MS. BOYD: From what you said, my  
13 understanding of the law is -- and I'm not a  
14 lawyer, obviously -- my understanding of the law  
15 is that you don't actually have to sit down and  
16 have a meeting together to have a meeting covered  
17 by the Act.

18 You can actually do a serial phone call  
19 to the other member, and discuss it over the  
20 phone, and still that meets the requirements of  
21 the Act, is my understanding.

22 And from what you've said there appears  
23 to be no dispute that you guys had to develop this  
24 supplemental errata in the Committee. In order to  
25 do that --



1           CHAIRPERSON KEESE: If that's a  
2 question, Commissioner Pernell and I developed the  
3 errata.

4           MS. BOYD: Okay. And you are both  
5 members of the Committee. And I provided you  
6 sections of the Bagley-Keene Act where it  
7 specifically states that both the Commission and  
8 the Committee are covered by the Act.

9           So basically, you did have a meeting.  
10 And we, as a party, didn't have an opportunity to  
11 participate. And at the August 23rd meeting,  
12 while you did block Bob Sarvey's Intervenor from  
13 participating, I was also blocked too.

14           I couldn't participate because somebody  
15 had their finger on the button, so I couldn't ask  
16 questions over the phone. I was only allowed to  
17 say anything at the very end, under public  
18 comment, just like Bob.

19           So what I'm saying is we couldn't raise  
20 these issues last time, and now it's too late for  
21 us to raise them this time, and you cut us out of  
22 the process last time.

23           So the point is you guys went and made a  
24 decision without us, and we didn't have any input.  
25 And that's what the Bagley-Keene is set up for, to

1 protect the public's right to participate.

2           You're given your power because you work  
3 for us. You can't keep information from us,  
4 that's our decision to make, whether or not we are  
5 going to comment or agree with some decision you  
6 make.

7           But we have a right, as a member of the  
8 public and as a party, to participate in your  
9 deliberations, to give input before you make a  
10 recommendation, such as a supplemental errata.  
11 That supplemental errata made significant changes  
12 from the previous errata.

13           And that errata made significant changes  
14 from the Presiding Member's Proposed Decision.  
15 Specifically around issues of air quality  
16 mitigation. And it's changed and it's changed and  
17 it's changed.

18           The same thing happened with the fire  
19 protection. You gave them the money, gave Tracy  
20 500,000, then you take it back. And it's, you  
21 know, it's all up in the air. The public can't  
22 follow this.

23           Every time you change the rule, and in-  
24 between meetings you're changing the decision and  
25 not giving us any input, how is that public

1 participation?

2 Fundamentally, you're not complying with  
3 the intent of the law, the Bagley-Keene Act, which  
4 is to give adequate public notice to us, to  
5 provide us an opportunity for meaningful and  
6 informed participation.

7 And by doing this, by having your  
8 meeting, which you've admitted to, and then not  
9 allowing us to participate -- when I read that  
10 newspaper article, I thought it was just the  
11 Applicant you were talking to, you were just  
12 excluding us to talk to the Applicant.

13 I've come to conclude that that may not  
14 be the case, you just, as the article said, you  
15 decided it on your own. That's fine, but you've  
16 got to have a meeting, that's the bottom line  
17 here. Thank you.

18 CHAIRPERSON KEESE: I think you missed  
19 some of my earlier comments, Mr. Boyd. I'm just  
20 going to comment that all of the evidence was  
21 taken in the evidentiary process. All the  
22 evidence was received in the evidentiary process.

23 The Committee, Mr. Pernell and I, then  
24 convert that into a decision. We obviously have  
25 to discuss it in order to come to a conclusion on

1     what our decision is. That's what took place, and  
2     there were not additional meetings with parties.

3             There was discussion between my fellow  
4     Committee member and I in coming up with the  
5     decision. Does Applicant care to comment?

6             MR. WHEATLAND: I'm Gregg Wheatland,  
7     attorney for the Applicant. The Applicant  
8     supports the Committee's decision, denying the so-  
9     called demand or motion by CARE.

10            And I would also comment that Mr. Boyd  
11    has conceded that the original basis for his  
12    motion, the allegation that a meeting took place  
13    between the Committee and the Applicant, is not  
14    true. No such meeting has occurred.

15            He's raised now for you a whole range of  
16    new allegations that were not made in his original  
17    motion. As to the meetings that may or may not  
18    have occurred, I will leave it to your general  
19    counsel to advise you on that matter.

20            CHAIRPERSON KEESE: Thank you. Staff?

21            MS. DE CARLO: Thank you. Lisa De  
22    Carlo, staff counsel. Staff does not have any  
23    comments on this issue.

24            CHAIRPERSON KEESE: Okay. Do we have any  
25    other comments on this issue? Mr. Sarvey?

1           MR. SARVEY: Thank you. Bob Sarvey,  
2   Intervenor. I just wanted to comment on the fact  
3   that we did have a meeting with the Business  
4   Meeting, and I wanted to present the information  
5   to all the Commissioners and the Committee, and  
6   provide information that would have effectively  
7   proven that the amendment that you've made to this  
8   decision was invalid and improper, but I was not  
9   allowed to provide that information.

10           I think that's what Mr. Boyd's whole  
11   basis is, is that we were not allowed to fully  
12   participate in the last hearing. And I'm going to  
13   provide that information for you today.

14           CHAIRPERSON KEESE: Thank you. As  
15   clarifying, not evidence. You get to comment on  
16   the evidence.

17           MR. SARVEY: Right. And this will be  
18   comments on interpretation of the evidentiary  
19   record that --

20           CHAIRPERSON KEESE: Yes, and that's very  
21   appropriate.

22           MR. SARVEY: -- the Committee had put  
23   forth in their amendment. And that's, I think,  
24   Mr. Boyd's point, and he's probably having a  
25   little problem projecting that to you.

1           CHAIRPERSON KEESE: Yes. We will --  
2 when we get done with the procedural steps we will  
3 be there. Do we have any comments from  
4 Commissioners? Commissioner Geesman?

5           COMMISSIONER GEESMAN: Mr. Chairman, if  
6 this is the appropriate time, I would like to move  
7 that the Commission affirm the decision of the  
8 Committee.

9           CHAIRPERSON KEESE: This is an  
10 appropriate time. Motion, Commissioner Geesman.  
11 (Thereupon, the motion was moved.)

12           Commissioner Boyd: Second.

13           CHAIRPERSON KEESE: Second, Commissioner  
14 Boyd.

15 (Thereupon, the motion was seconded.)

16           All in favor?

17           (Ayes.)

18           Opposed? Four to nothing, that matter  
19 is concurred in. The next matter concerns a  
20 motion to postpone this hearing, which was  
21 submitted by Intervenor Robert Sarvey, docketed on  
22 August 14th, 2003.

23           The Committee denied Mr. Sarvey's motion  
24 on August 19th, and he might wish to appeal to the  
25 full Commission today.

1           In any event, we will consider at the  
2     same time the other matter raised in Intervenor  
3     CARE's appeal, which concerns the Bagley-Keene  
4     Act, which alleges a similar matter, that the  
5     public was not provided with ten days notice of  
6     this meeting.

7           With regard to CARE's appeal, the  
8     Intervenor asserts that notice was provided on the  
9     Commission's web site on August 11, which is of  
10    course only nine days before today. While the  
11    website did state that the notice was posted on  
12    Monday the 11th, the parties and participants were  
13    notified that preceding Friday.

14          In fact, the notice's proof of service  
15    indicates that it was mailed on August 8th to all  
16    parties and participants. The Hearing Officer  
17    also notified the parties and participants via e-  
18    mail on August 8th, that the Committee had issued  
19    that notice.

20          Even though it was electronically posted  
21    on the 11th, in my opinion there is no reason to  
22    postpone the hearing, because all parties were  
23    directly notified on the 8th, and they knew that a  
24    hearing was likely to be held on this date, and  
25    they have had adequate time to prepare.

1           At this time I'll have Mr. Boyd and then  
2 Mr. Sarvey speak, if they wish to speak to this,  
3 and then again we'll have Applicant, staff, and  
4 other parties.

5           MR. BOYD: Real simple. Bagley-Keene  
6 Act isn't set up for parties, it's set up for the  
7 public. The public didn't get ten-day notice on  
8 the Internet, as per the Bagley-Keene Act. That's  
9 what the law says. I'm not a lawyer, I just know  
10 how to read. It said ten days.

11           The law is set up for the public, to  
12 protect the public's right to participate. Not  
13 Intervenor's right, not the Applicant's right, not  
14 any other's rights, the public's right. So,  
15 unless you meet the requirements of that, you're  
16 not in compliance. Thank you.

17           CHAIRPERSON KEESE: Thank you. Mr.  
18 Sarvey, would you care to speak? Mr. Blees?

19           MR. BLEES: I believe that this hearing  
20 has been properly noticed, as discussed in the  
21 Committee's denial of Mr. Sarvey's motion to  
22 postpone.

23           CHAIRPERSON KEESE: Thank you.

24           COMMISSIONER GEESMAN: Mr. Chairman?

25           CHAIRPERSON KEESE: Mr. Geesman?



1           COMMISSIONER GEESMAN: I would move that  
2 we affirm the Committee's decision.

3           CHAIRPERSON KEESE: Thank you. Motion  
4 by Geesman.  
5 (Thereupon, the motion was moved.)

6           COMMISSIONER BOYD: Second.

7           CHAIRPERSON KEESE: Second by Boyd.  
8 (Thereupon, the motion was seconded.)

9           CHAIRPERSON KEESE: All in favor?  
10 (Ayes.)

11           Opposed? Decision confirmed. The final  
12 procedural matter before we get to the substantive  
13 issues concerns alleged violations of the Clean  
14 Air Act by other facilities owned by the  
15 Applicant, and the potential affect of those  
16 violations on this proceeding.

17           This matter was raised by Intervenor  
18 CARE in a document that was docketed on July 18th,  
19 2003. Mr. Boyd of CARE alleged in that document  
20 that Calpine was in non-compliance with the  
21 federal Clean Air Act.

22           Mr. Boyd alleges that there are 57  
23 notices of violation at Calpine's Los Medanos and  
24 Delta Energy Centers, all within the Bay Area Air  
25 Quality Management District.

1           During the July 23rd Business Meeting,  
2   Mr. Boyd stated that, in order for the Commission  
3   to certify this project, there must be evidence  
4   that all of the Calpine facilities are in  
5   compliance, or have a schedule for compliance.

6           I'll ask at this time if there is a  
7   representative from the Bay Area AQMD here today  
8   who can address the record?

9           MR. HILL: Good morning, my name is  
10   Steve Hill. I'm the Manager of the Permit  
11   Evaluations Section for the Bay Area Air Quality  
12   Management District, and I'm here to answer any  
13   questions that I can answer for the Commission.

14           To speak to the issue of whether or not  
15   the facility is currently in compliance, the  
16   existence of past violation notices is not  
17   evidence of current non-compliance. And the  
18   District's current position is that all of the  
19   Calpine facilities are currently in compliance  
20   with our regulations and with their permit  
21   conditions.

22           CHAIRPERSON KEESE: Thank you very much.

23           MR. HILL: Thank you.

24           CHAIRPERSON KEESE: Counsel?

25           MS. DE CARLO: Staff's position is that,

1 with the Bay Area Air Quality Management  
2 District's confirmation that the NOV's issued for  
3 both Delta and Los Medanos facilities are not  
4 outstanding and do not reflect ongoing violations,  
5 staff is comfortable with the conclusion of the  
6 revised Presiding Member's Proposed Decision that  
7 the project will comply with all laws, ordinances,  
8 regulations and standards.

9 CHAIRPERSON KEESE: Thank you very much.  
10 I hope you can hang on for a few minutes?

11 MR. HILL: Yes, I would.

12 CHAIRPERSON KEESE: Mr. Sarvey? Mr.  
13 Boyd?

14 MR. SARVEY: Yes. I just had two  
15 questions of the Bay Area representative.

16 CHAIRPERSON KEESE: Well --

17 MR. SARVEY: And perhaps I can ask them  
18 through you, Chairman Keese?

19 CHAIRPERSON KEESE: Okay.

20 MR. SARVEY: First, I would like to  
21 know, was the compliance problems at these  
22 facilities, was the compliance manager of the CEC  
23 notified of these problems, because when I  
24 contacted the compliance manager for both of these  
25 projects she was unaware of these violations.

1           So this leads me to believe that there  
2   is a breakdown in communication between the Air  
3   District and the CEC. And I was hoping that the  
4   compliance manager would be here, and perhaps she  
5   is.

6           But to me -- and I could be wrong in my  
7   impression -- but I was led to believe that she  
8   was unaware of the violations, and perhaps she  
9   was.

10           And then the other question I have, has  
11   Calpine paid the fines on these violations?  
12   Because my conversation with Rochelle Henderson of  
13   the Bay Area, as of yesterday, is that these fines  
14   have not been paid.

15           So therefore, the Applicant, in my  
16   opinion, is not in compliance.

17           CHAIRPERSON KEESE: What we heard --  
18   well, let's hear from Mr. Boyd.

19           MR. BOYD: First, in the response of  
20   Steve Hill's, while he did address the notices of  
21   violations, he failed to address the letter that I  
22   received from the Air District that prompted this  
23   at the 23rd meeting, that says "the notice of  
24   violations are still under investigation by the  
25   District, pursuant to state of California

1 government code section 6254 subdivision S.

2 Records of complaints to or  
3 investigations by local government agencies for  
4 law enforcement purposes are exempt from the  
5 Public Records Act disclosure requirements.

6 As Bob stated, he called yesterday to  
7 see if the records were now available, that had  
8 been withheld as a result of this letter. And as  
9 he stated, they haven't paid the fine yet. So  
10 they're still not in compliance.

11 In my appeal, basically I stated, and I  
12 still state it now, both of the facilities were  
13 permitted by the CEC, and both are the subject of  
14 an active civil rights complaint by CARE with the  
15 USEPA Office of Civil Rights against the CEC, Bay  
16 Area Air Quality Management District, and the  
17 California Air Resources Board.

18 One of the few complaints which USEPA  
19 has formally accepted for investigation. We must  
20 object and protest the continued effort by the  
21 Committee to provide contradictory evidence at the  
22 last minute.

23 At the August 20, 2003 Business Meeting,  
24 in clear violation of the no surprise rule, we  
25 demand the BAAQMD APCO, the Air Pollution Control

1 Officer, provide a list certified under penalty of  
2 perjury, of all major facilities within the Bay  
3 Area Air Quality Management District owned or  
4 operated by the Applicant or by any entity  
5 controlling, controlled by, or under the common  
6 control with Applicant, and demonstrates, by  
7 certifying under penalty of perjury, that they are  
8 either in compliance or on a schedule of  
9 compliance with all applicable state and federal  
10 admission limitations and standards, as nothing  
11 else will suffice at this time.

12 Having a person come and testify doesn't  
13 overturn this letter from them. And you have not  
14 provided any evidence in the record that they are  
15 in compliance. Thank you.

16 CHAIRPERSON KEESE: Thank you. I have  
17 Mr. Brian Bunger on the phone, from the Air  
18 Resources Board.

19 MR. BUNGER: (via telephone) Actually,  
20 from the Bay Area Air Quality Management District.

21 CHAIRPERSON KEESE: I thought so, thank  
22 you.

23 MR. BUNGER: Yes, I am the district  
24 counsel for the District, and it is my offices'  
25 responsibility to deal with notices of violation,

1 and I have just a brief comment, which is that  
2 there is a distinction between a facility being  
3 out of physical compliance, which is what the  
4 Applicant's appear to be referring to, and whether  
5 or not they've paid civil penalties on the NOV's.

6 It is correct that on a number of these  
7 NOV's the civil penalties have not yet been paid,  
8 but it is not correct that they are out of  
9 compliance. They have been in physical compliance  
10 for many, many months now.

11 And so, from the District perspective,  
12 as Mr. Hill put forward, there is not an ongoing  
13 compliance problem that we're aware of at any of  
14 the Calpine facilities within the District.

15 CHAIRPERSON KEESE: Thank you. Thank  
16 you for clarifying it very quickly. We've heard  
17 two things, I believe. We've heard that the  
18 projects are in compliance, currently, and we've  
19 heard from staff counsel that that meets all their  
20 concerns in the licensing process. Commissioner  
21 Geesman?

22 COMMISSIONER GEESMAN: Mr. Chairman, I  
23 would move that we confirm the Committee's  
24 decision on this matter.

25 CHAIRPERSON KEESE: Motion Commissioner

1 Geesman.

2 (Thereupon, the motion was moved.)

3 COMMISSIONER BOYD: Second.

4 CHAIRPERSON KEESE: Second Commissioner

5 Boyd.

6 All in favor?

7 (Ayes.)

8 Opposed? Decision confirmed. Mr.

9 Blees, do you have any final comments?

10 MR. BLEES: No, sir.

11 CHAIRPERSON KEESE: Thank you. We'll

12 now turn to the substantive issues in this case,

13 as discussed in the supplemental errata for the

14 RMPD. Mr. Williams, will you please summarize the

15 document?

16 MR. WILLIAMS: Yes, thank you, Mr.

17 Chairman. Major Williams, the Hearing Officer.

18 At the July 23rd Business Meeting there was a

19 disagreement between staff and Applicant related

20 to AQSC5. That proposed condition was intended to

21 require the Applicant to mitigate the CEQA impact,

22 which was identified as 66.8 tons of NOX per year

23 through the life of the project.

24 Applicant, staff and the San Joaquin Air

25 Pollution Control District raised objections



1     regarding AQSC5. Applicant, upon condition as  
2     written, would result in an open-ended financial  
3     obligation to the Applicant, making financing very  
4     difficult, and the practical impact would be that  
5     Applicant would then be forced to purchase  
6     emission reduction credits, or ERC's, to fulfill  
7     this obligation.

8             The Air District, the San Joaquin Air  
9     Pollution Control District, claimed that the  
10    impact of the condition would be to abrogate the  
11    Air Quality Mitigation Agreement, or AQMA, and  
12    that if Applicant decided to choose ERC's no  
13    actual improvement to San Joaquin's air would  
14    result.

15            Staff had concerns that the AQMA would  
16    not be sufficient to fulfill AQSC5. The Air  
17    Quality Mitigation Agreement sets forth a lump sum  
18    payment of \$1,248,000 to San Joaquin to fund  
19    various emission reduction measures that San  
20    Joaquin will implement.

21            One such measure is a program to replace  
22    or retrofit heavy duty engines. One concern is  
23    the mismatch between the purported seven to ten  
24    years of benefits that would result from this  
25    program, and the project emissions, which are over

1 the life of the East Altamont Energy Center.

2 To remedy this shortcoming and to  
3 provide Applicant with certainty over its  
4 financial obligation, the Committee has directed  
5 the Applicant to ensure that the only equipment  
6 selected for replacement or retrofit will have a  
7 15-20 year lifespan or more.

8 That concludes my summary, Mr. Chairman.

9 CHAIRPERSON KEESE: Thank you.  
10 Commissioner Pernell?

11 COMMISSIONER PERNELL: Mr. Chairman, I  
12 would -- you kind of read my mind here. But I  
13 would point out that the Committee not only  
14 considered the lifespan of the proposed  
15 mitigation, which is the engines, but also the  
16 likely cost per ton of emission reductions that  
17 San Joaquin will incur to implement the program.

18 So we, you know, I think we -- we being  
19 the Committee -- has done a thorough analysis of  
20 this issue, and if someone from San Joaquin would  
21 care to speak to that, Mr. Chairman?

22 CHAIRPERSON KEESE: Yes, do we have  
23 anybody from San Joaquin? Thank you. And we  
24 express our concern. Proceed.

25 MR. SWANEY: Thank you. I'm Jim Swaney

1 with the San Joaquin Valley Air District. As  
2 Commissioner Keese just mentioned, Sayed Sadredin,  
3 our Director of Permit Services, participated by  
4 phone.

5 Due to some health issues he's not able  
6 to participate today, but I just want to assure  
7 you that he is doing fine and should be back to  
8 work soon.

9 CHAIRPERSON KEESE: Thank you. Go  
10 ahead.

11 MR. SWANEY: I agree with Commissioner  
12 Pernell's statement that you have done a very  
13 thorough job of reviewing all of the issues with  
14 this. We support the supplemental errata. We  
15 feel that we easily will be able to achieve the  
16 reductions targeted with the payment, as contained  
17 in the Air Quality Mitigation Agreement.

18 And even with the limitation on the  
19 lifespan under the heavy duty engine retrofit  
20 program, we still feel that, we're very confident  
21 that we will meet those reductions.

22 CHAIRPERSON KEESE: Thank you. Let me  
23 ask -- how does the \$15,000 compare to your  
24 historic costs?

25 MR. SWANEY: The \$15,000 cost has been

1 -- when you look at the dollars per ton -- the  
2 \$15,000 is a number that is used in the state Carl  
3 Moyer Fund Program.

4 It's a number that Governor Davis came  
5 up with during the energy crisis of 2001 for  
6 mitigation on plants that could come online very  
7 quickly during that summer, to pay that fee in  
8 lieu of going out and securing emission reduction  
9 credits for compliance with local ordinances.

10 In our experience, our numbers are  
11 normally much, much lower than that.

12 CHAIRPERSON KEESE: Thank you.

13 COMMISSIONER PERNELL: Mr. Chairman,  
14 just another note here. I think it's important to  
15 note that between a very conservative assessment  
16 of \$15,000 and our amendment, which directs  
17 replacement of dirty engines that still have a  
18 long life span, will more than adequately resolve  
19 those questions from the last Business Meeting.

20 And so, again, I just want to point out  
21 that with this issue the Committee has done a  
22 thorough analysis of, and I support that decision.

23 CHAIRPERSON KEESE: Thank you. I have  
24 cards submitted by Mr. Sarvey, Mr. Huffman, and  
25 Mr. Sundberg to speak on this issue. Or, to speak

1 on this case. Would you like to speak on this  
2 issue, Mr. Sarvey?

3 MR. SARVEY: Did you want all my  
4 comments at this time, or just to this specific  
5 issue?

6 CHAIRPERSON KEESE: Feel free.

7 MR. SARVEY: We could deal with this  
8 issue first, and then let everybody else speak. I  
9 have some other issues on the project that are  
10 still unresolved in my mind.

11 CHAIRPERSON KEESE: You know, it seems  
12 to me -- why don't we deal with this issue?

13 MR. SARVEY: Okay, sure. I intended to  
14 present this evidence last time, but I was unable  
15 to do so.

16 CHAIRPERSON KEESE: Uh, this argument.

17 MR. SARVEY: Ms. Mendonca passed out the  
18 East Altamont Energy Center --

19 CHAIRPERSON KEESE: Okay, I'm trying to  
20 clarify what was misunderstood last time. We're  
21 not taking evidence here. You're presenting  
22 argument on the evidence. Okay?

23 MR. SARVEY: I wanted to present  
24 argument on the evidence. Thank you, Chairman.

25 CHAIRPERSON KEESE: As an Intervenor.

1           MR. SARVEY: But, in any event, I don't  
2 know what we're calling it anymore, the addendum  
3 -- whatever it is -- revised to the, you know, I'm  
4 lost as to where we're at here.

5           But essentially, the new decision is  
6 based on the fact that the Applicant told the  
7 Commissioners and San Joaquin that he would  
8 provide ERC's instead of the million dollars that  
9 this agreement calls for.

10          And I've given you all a copy of this  
11 agreement, and I'd like someone to show me where  
12 the Applicant has the option to provide emission  
13 reduction credits for the million dollars, because  
14 it doesn't exist in this agreement.

15          They're bound by this agreement, just as  
16 San Joaquin is bound by this agreement to defend  
17 this agreement in every way. So the assertion  
18 that this decision was reached because the  
19 Applicant would provide ERC's instead of the  
20 million dollars is false, because he can't.

21          And I gave you all a copy of this, and  
22 I'd like anybody that knows anything about this to  
23 show me where they've got the option, because I've  
24 read it thoroughly, there's no option there.

25          Now the other issue is that, what you

1     need to understand about this program is that  
2     these programs are incentive payments. And  
3     essentially the public is required to match this  
4     incentive payment.

5             So actually what we're doing with these  
6     agreements here is we're asking the public to  
7     provide money to mitigate the Applicant's  
8     pollution, which to me is an unacceptable way to  
9     approach this.

10            I mean, if we're just going to give the  
11     Applicant credit for his portion, and that be the  
12     tonnage, then I could accept that. But as I see  
13     it, that's not the way this thing is laid out and  
14     that's not the way this thing's going to operate.

15            Now my other argument is if the  
16     Applicant needs certainty, and that's another  
17     reason that this new amendment was made -- needs  
18     certainty in his licensing for his financial  
19     purposes, clearly staff laid out a very certain  
20     path for him. I believe it was 1,080 engine  
21     retrofits and 325 fireplace retrofits.

22            That's all the certainty you could ask.  
23     And surely we could reach another compromise  
24     position besides that, and provide certainly for  
25     this Applicant, but I see no reason to violate

1 CEQA and not make this Applicant provide emission  
2 reductions for the life of this project.

3 I think it's unfair to the community,  
4 and I think it's unfair to ask the community to  
5 pay for the Applicant's mitigation out of their  
6 own pockets. It's just not right.

7 CHAIRPERSON KEESE: Thank you. Mr.  
8 Huffman, would you care to speak on this issue?

9 MR. HUFFMAN: Yes, thank you. I  
10 appreciate the opportunity to speak before the  
11 Commission. My name is Wes Huffman, I'm a citizen  
12 of the city of Tracy, and also I'm on the Tracy  
13 City Council.

14 And for reason's unbeknownst to me,  
15 either through my oversight or some other problem,  
16 we've not had an opportunity to discuss the  
17 impacts that will affect our particular community,  
18 which is about four miles away from this  
19 particular plant.

20 I am amazed, I wish I was on this  
21 Commission instead of the City Council, because  
22 this seems to be quite a bit easier. We have lots  
23 more citizens that show up, and don't always agree  
24 with what we're doing. And mostly because they  
25 don't understand what we're trying to do. So if I



1 make that error I ask for your indulgence, because  
2 this is my first time here.

3 I am impressed in how quickly you take  
4 care of lots of issues, and this is just kind of  
5 the final overview, if there's anything new let's  
6 hear it. And for the most part you recognize  
7 staff's great support for the technical positions.

8 As I've learned, the original position  
9 and the staff's submitted CEQA document  
10 recommended considerable more money from the  
11 Applicant to mitigate the difficult air quality  
12 situation.

13 So you're stuck with I'm going to make a  
14 crummy decision or a really crummy decision, and  
15 so either way you're not going to do well, I  
16 think. But I can appreciate it's your  
17 responsibility and you have to do that.

18 I find the arguments against the  
19 financial situation of Applicant a little bit  
20 weak, in that their contract is from considerably  
21 higher amount than what the market rate is, and  
22 apparently they're supplying that by buying it  
23 someplace else and selling it at their contract  
24 rate.

25 So I think they're making quite a bit of

1 money. Earlier somebody argued about the  
2 mitigation and the life span of having some  
3 equipment that lasted 15 years.

4 That would be great if the plant would  
5 shut down after 15 years, or we had a chance to  
6 come back and say we used up the previous  
7 mitigation and so we need to talk to you again  
8 about that.

9 I would think, as a plant person, I  
10 would like to know for sure if I had an annual  
11 amount rather than some lump sum that people had  
12 to spend in one place, that overall mitigation  
13 might be better.

14 But the real tradeoff is how much is the  
15 electricity going to cost, and how much are we  
16 going to pay in air quality loss because of that.

17 Personally, as a citizen, if in fact --  
18 as one other speaker suggested -- that the  
19 citizens are actually paying for this via  
20 surcharge on their utility bill, I would certainly  
21 be happy to pay some additional amount to make  
22 sure that the air quality was greatly improved.

23 And apparently there's technology  
24 available to do that. Not cheap technology of  
25 course, but there is that ability. And I would

1 hope that the Commission might consider that in  
2 their deliberations.

3 That, rather than attempt to meet the  
4 minimum requirement of what the rules and  
5 regulations are, maybe the spirit of what the  
6 rules are is how clean can we make this air, and  
7 how much is that going to cost? And make an  
8 appropriate determination. Thank you very much.

9 CHAIRPERSON KEESE: Thank you. I'm not  
10 sure you would have wanted to participate in all  
11 the hearing workshops that we've had. I will say  
12 that, under California's basic laws, all the  
13 emissions of this plant are mitigated in the Bay  
14 Area district where it resides.

15 The Committee recognized and asked for  
16 help for the Tracy community. The final debate  
17 was should we be content with ERC's, which have  
18 already taken place, or should we have impact in  
19 Tracy.

20 The Committee, Mr. Pernell and I meeting  
21 and conferring many times, feel that the proposal  
22 we're putting forward here will deliver immediate  
23 impact to Tracy, and will fully offset, for the  
24 life of this project, the impact that we've  
25 determined for Tracy.

1           MR. HUFFMAN: Well, I apologize for not  
2     submitting my input earlier in the process, so  
3     that it might have had more of an impact. You  
4     realize, of course, the Bay Area air is not the  
5     air that's going to be affected by this plant.  
6     It's actually three miles from our town, which is  
7     in San Joaquin Valley.

8           And certainly the pollution problem in  
9     the Valley -- which I believe Sacramento is our  
10    top polluted city -- is like any city in the  
11    valley, suffers from whatever comes here.

12          And of course the prevailing wind, if  
13    you went to Tracy and saw the windmills that we've  
14    built there to cool off the place, all blow into  
15    the valley, and there's really no way to clear  
16    that air out.

17          So putting things there, and allowing  
18    credits from anyplace, rather than mitigation in  
19    the location of the plant, really seems to be not  
20    the most appropriate way to address the overall  
21    problem. Thank you very much.

22          CHAIRPERSON KEESE: Trust me, the  
23    committee struggled with this issue. Mr.  
24    Sundberg?

25          MS. SUNDBERG: It's Ms. Sundberg.

1           CHAIRPERSON KEESE: Oh, I'm sorry, I can  
2 read it -- Irene.

3           MS. SUNDBERG: Yes, I'm a familiar name  
4 here, I know. Good morning, Commissioners.

5           COMMISSIONER PERNELL: Good Morning.

6           MS. SUNDBERG: I hadn't planned on  
7 talking today. Unfortunately, Susan Sarvey had a  
8 major asthma attack last night at 4:00 this  
9 morning, and she was rushed to the hospital by her  
10 husband, and didn't return until a little after  
11 7:30 this morning. And so, I'm here instead of  
12 Susan.

13           And Susan delivers more professionally,  
14 probably, than I do. But at this point you're  
15 stuck with me, and this is where I'm at. I've  
16 lived in Tracy for 21 years. I'm on the Planning  
17 Commission.

18           And I'm thrilled that Mr. Huffman came  
19 today to explain to you how serious a problem this  
20 is. Yes, this plant is going to be in Alameda  
21 County, but the effects -- and Mr. Pernell, I know  
22 you know what I'm talking about -- are going to  
23 end up in Tracy.

24           You spent many a meeting with me and the  
25 rest of our city on the GWF Peaker Plant, of which

1 we got \$1.3 million for air quality.

2 I'm saddened to think that we're not  
3 going to get that, or any part of that, to protect  
4 our community. I myself have asthma. I've been  
5 on the floor at night throwing up and nothing  
6 coming up and not being able to breathe. Until  
7 it's happened to you, you have no idea what it's  
8 like.

9 My Assemblywoman, Barbara Matthews, has  
10 written you twice about this project. She  
11 requested a cumulative air study be done. We  
12 never have gotten one. We don't have a study that  
13 includes the Mountain House. This is a travesty  
14 to our community.

15 And you are holding the cards today.  
16 It's your decision, and not anyone else's. You're  
17 spending my tax dollars today to make a decision  
18 that's going to affect my community for at least  
19 50 years. Think about that. Would you want to  
20 live in my community?

21 You know, it's a very hard decision when  
22 they're putting peaker plants and two, not one but  
23 two more electrical plants. It's a very difficult  
24 decision you have to make today.

25 My Fire Chief, and my firefighters, they

1     deserve better than they've been given credit for.  
2     They're honorable men, they're responsible, they  
3     do their job well. And I'm sure they wouldn't  
4     allow any of you to die on the floor here today,  
5     that they'd come to your aid.

6                 We will be expected to be first  
7     response, and we will be first response, because  
8     that's what the law states. But you've not given  
9     us any money for that equipment.

10                As far as I know, Susan gave a list to  
11     the Commission of equipment that we needed. Well,  
12     she's willing to forego the minor equipment  
13     because someone came through out of a private  
14     entity and gave our fire department the equipment  
15     they so desperately needed.

16                Today I'm asking that Calpine give us a  
17     fire truck to go with that equipment, to aid our  
18     firemen in doing their job to the best of their  
19     ability. Your staff consists of a very well  
20     educated group of people, and I'm ashamed to stand  
21     here and say that I think they said the right  
22     thing, and you have made the wrong decision.

23                They wanted \$13.5 million for  
24     mitigation, and you told them no. How dare you.  
25     This is a huge plant. Our peaker plant gave us

1     \$1.3 million, and we've doubled almost, we've  
2     almost doubled that money by getting grants and  
3     doing natural gas buses and, you know, setting up  
4     a station in our city for our school district.

5             We've used that money to clean up our  
6     air. Now, I want you to use your paycheck, and  
7     the money that I pay you, to make the right  
8     decision today. Thank you.

9             CHAIRPERSON KEESE: Thank you. Mr. Boyd  
10    indicates he wants to make general comments. Mr.  
11    Sarvey, why don't you --

12            MR. BOYD: No, no, I didn't want to make  
13    a general comment. I just wanted to comment on  
14    the item before you.

15            CHAIRPERSON KEESE: Well, since we've  
16    covered everything else I was going to ask Mr.  
17    Sarvey to finish up his, and then you take up  
18    every issue. But why don't you start, Michael?

19            MR. BOYD: I just wanted to address the  
20    air quality mitigation issue.

21            CHAIRPERSON KEESE: And every other  
22    issue you want to address.

23            MR. BOYD: You want me to do it all at  
24    once?

25            CHAIRPERSON KEESE: Right. In the ten



1 minutes we're going to give you.

2 MR. BOYD: Well, I don't think I need  
3 ten minutes.

4 CHAIRPERSON KEESE: All right, in the  
5 five minutes we're going to give you. Okay.

6 MR. BOYD: First off, on the issue  
7 before you of what's being offered up. I've read  
8 the agreement with the San Joaquin Valley Air  
9 Pollution Control District, and for the life of me  
10 I don't see anything in there anywhere that says  
11 anything about ERC's.

12 And so I don't understand how that  
13 agreement is even valid anymore, if there's no  
14 requirement. It seems like what you're saying is  
15 they can either use ERC's or they can use the  
16 million dollars to create the 66 tons in  
17 reduction.

18 CHAIRPERSON KEESE: There's -- I don't  
19 believe there's a reference to ERC's any longer.

20 COMMISSIONER BOYD: You're the second  
21 witness who's raised that issue, and I'm frankly  
22 puzzled. I don't understand what you're talking  
23 about, because it says here "a million dollars  
24 plus" and it says nothing about ERC's.

25 MR. BOYD: To really simplify it --

1           COMMISSIONER BOYD: There was a  
2 hypothetical discussion in the last hearing about,  
3 you know, what if, what if, what if, and there  
4 were references, and could they have satisfied  
5 this through purchase of ERC's, and we had that  
6 discussion.

7           But that was a hypothetical and that's  
8 past history. And unless I'm missing something --

9           MR. BOYD: So you guys aren't saying  
10 they have an option of using the ERC's -

11          CHAIRPERSON KEESE: We are not saying  
12 they have an option. We are saying --

13          MR. BOYD: To meet the 66 ton  
14 requirement.

15          CHAIRPERSON KEESE: Correct.

16          COMMISSIONER BOYD: And pay the million  
17 two hundred and something thousand, or whatever  
18 it--

19          MR. BOYD: Then I take it back, okay?  
20 Basically, so now I'll go to the general stuff,  
21 just trying to make it simple. But the real issue  
22 is this. The staff did a CEQA analysis, and they  
23 recommended \$13 million in mitigation.

24          The Applicant, on their own, went and  
25 negotiated an agreement with the Air District,

1 outside of this process, where they didn't perform  
2 any environmental review on the air agreement.  
3 The air district didn't perform environmental  
4 review.

5 They testified at the hearing that they  
6 are not subject to CEQA, but I have a copy of  
7 their CEQA procedures. So they've admitted on the  
8 record that they didn't do any CEQA review on  
9 their agreement.

10 Now, in order for them to approve that  
11 agreement they had to take discretionary action,  
12 they had to approve the agreement. Once they  
13 entered into that agreement, then they're bound by  
14 that agreement, as Mr. Sarvey has raised so many  
15 times, on Chapter Five.

16 So basically they did it outside the  
17 normal process. You guys are set up to deal with  
18 CEQA, the Bay Area Air Quality Management District  
19 is set up to deal with the Clean Air Act, the  
20 federal Clean Air Act requirements and the  
21 district's regulations, okay.

22 That's separate from your requirements  
23 under CEQA. Your requirements under CEQA are to  
24 mitigate the impacts of the project, which your  
25 staff has identified, to the maximum extent

1 feasible. What they've offered up is that you  
2 need \$13 million to do that.

3 The Applicant then on its own went and  
4 negotiated a million dollar agreement on their  
5 own. Well, it's obvious to me why they would want  
6 the million dollar agreement. They certainly  
7 don't want to pay the \$13 million that staff has  
8 recommended.

9 But that doesn't meet your requirements  
10 under CEQA. You guys aren't responsible -- as  
11 you've pointed out to me so many times before --  
12 for the Clean Air Act. You're responsible for the  
13 CEQA mitigation, okay.

14 You don't have anything in your record,  
15 that I know of, that is based on any environmental  
16 analysis that your staff has performed, that  
17 demonstrates that that \$1,000,000 is adequate in  
18 any way to mitigate the impacts that have been  
19 identified.

20 So you haven't complied with CEQA's  
21 requirements. All you're doing is concurring with  
22 a private arrangement made between Applicant and  
23 the air district where the pollution is going to  
24 go. Under CEQA you've got to mitigate the impact  
25 on Tracy, on the San Joaquin Air Pollution Control

1 District.

2 And that's the bottom line. If you go  
3 forward with the \$1,000,000 that they're offering,  
4 that's what you have. You've basically bought  
5 into their agreement. You've bought into a  
6 private agreement with a private party, you  
7 haven't carried out your duties under CEQA to  
8 mitigate the impact.

9 At the last meeting, we weren't allowed  
10 to present -- as we said earlier, because we were  
11 blocked from participating -- if we had been able  
12 to participate, there are a number of other issues  
13 that we would have raised. So what I've done is  
14 briefly describe the issues, just to make an offer  
15 of proof of what we would have raised if we had  
16 had that opportunity at the last meeting.

17 And these are the disputed topics that  
18 weren't covered today.

19 COMMISSIONER GEESMAN: Hold it, hold it,  
20 hold it.

21 CHAIRPERSON KEESE: Hold it just a  
22 moment, Mr. Boyd.

23 MR. BOYD: Certainly.

24 CHAIRPERSON KEESE: Mr. Geesman.

25 COMMISSIONER GEESMAN: I wasn't at the

1 last meeting. I've reviewed the transcript.  
2 You've got a clean slate with me. You make  
3 whatever presentation you want to.

4 MR. BOYD: Certainly, certainly. Thank  
5 you. The dispute topics that you've identified  
6 that are still outstanding are: one, the record  
7 doesn't match the decision. That's the first and  
8 most important.

9 The decision is legally vulnerable on  
10 four issues -- land use, water, public health and  
11 safety, and air quality. There was no unbiased  
12 CEQA analysis, as I described before, in this  
13 process. There is no water contract with Mountain  
14 House, so you don't have any water agreements to  
15 serve the reclaimed water that you're proposing.

16 The Fire Department issues are obviously  
17 still in limbo. They've lost the 500,000 that  
18 they had in the Revised Presiding Member's  
19 Proposed Decision. And you're giving \$3 million  
20 to Alameda County, and they're not even the first  
21 responder.

22 There was no outside, unbiased input  
23 from effective agencies due to the Memorandums of  
24 Understandings before the hearings even took  
25 place. And this prevented them from presenting

1 their evidence in the hearings, that would have  
2 countered anything the Applicant would have said,  
3 because they signed -- like the Air Mitigation  
4 Agreement, Section Five, they have to stand by  
5 with whatever the Applicant wants.

6 The Commission has rejected their own  
7 expert's staff comments, completely and totally,  
8 since they made valid points that were supported  
9 with fact.

10 These issues also were brought up by a  
11 member of the public, and they were never  
12 addressed or adequately responded to in written  
13 form. In all the other processes I've been, when  
14 a member of the public came up and made a comment  
15 there was a written response for each comment they  
16 made.

17 I know you don't do it for us  
18 Intervenors, but you did it before for all the  
19 public. And these issues that I just raised were  
20 raised by the public at the last meeting, but  
21 there's no response.

22 So, basically, the bottom line is this.  
23 There's a lot of still-disputed topics that us  
24 Intervenors and the public have not had an  
25 opportunity to be heard on. And now you're going

1 to go ahead and approve it, is what it appears to  
2 be. The article that I saw clearly shows -- in  
3 the Tracy Press -- clearly shows pre-commitment  
4 for this project.

5 The long-term -- as I've said earlier  
6 before, there's a long-term contract that Calpine  
7 has with the Department of Water Resources that  
8 also pre-commits you to this project.

9 And we could go back and forth over  
10 that, I'm sure. But the bottom line is you guys  
11 are already -- as far as I can tell, the record is  
12 clear that you have pre-committed to this project.

13 So, the only other thing I can say is  
14 that we accept the record as it currently stands.  
15 Thank you.

16 CHAIRPERSON KEESE: Thank you. Mr.  
17 Sarvey?

18 MR. SARVEY: First, I want to apologize  
19 to the Commission members. I'm not very sharp. I  
20 guess you heard, my wife, I had to rush her to the  
21 emergency room last night, an asthma attack. And  
22 basically, that's the reason I'm here.

23 A lot of people in Tracy think I'm a  
24 little whacked out, here I'm challenging Calpine,  
25 I'm challenging the Commission, I'm suing this,



1 I'm suing that. But the reason I'm here is  
2 because my family and my wife, they all have  
3 severe asthma.

4 We have these episodes, and, you know, I  
5 could just move out of Tracy and I probably  
6 should, but then I'd just leave behind these  
7 people to be subjected to what I perceive and from  
8 what the staff has in their analysis stated, on  
9 the record, unmitigated emissions.

10 And I don't want to belabor the point,  
11 it's 175 tons of ozone precursors and 50 tons of  
12 PM. It doesn't matter what staff says now, or  
13 what the Committee says now, the record clearly  
14 reflects that there's no CEQA analysis backing the  
15 mitigation that you're providing on this project,  
16 and that's the reason I'm here.

17 Because the people in Tracy, they  
18 deserve better than that. And as you all know,  
19 there's three projects, not just one. There's two  
20 1,100 megawatt plants that we're dealing with  
21 here, two of the largest plants in the state. And  
22 is it appropriate to put two of the largest plants  
23 in the state right at the border of one town?

24 And I put that forward to you as a  
25 question. And my answer is no. But, in any

1 event, at the June 23rd Business Meeting the  
2 Applicant threatened the community, and the  
3 Committee was substituting ERC's for real-time  
4 emission programs provided by the pollution  
5 control district.

6 And the Applicant stated that he would  
7 use the ERC's to satisfy his obligation to the  
8 pollution control district, and provide certainty  
9 as to the cost of his air quality mitigation,  
10 which is a valid argument.

11 Well, the Committee responded to this  
12 empty threat by again changing the conditions of  
13 certification to respond to the Applicant's  
14 threats.

15 And I've provided you all with a copy of  
16 that, and I still see nowhere where the Applicant  
17 has the option to provide emission reduction  
18 credits for this million dollars, and basically,  
19 the amendment that was just provided, that was the  
20 reason that you made the change to the decision.  
21 I mean, that's what it says. Maybe I'm misreading  
22 it, but I don't think I am.

23 In any event, you know, I said before,  
24 if the committed has the desire to show certainty  
25 to the Applicant so he can obtain financing then,

1     you know, clearly staff's already provided that,  
2     and I've discussed that already.

3             So, unless you provide the CEQA  
4     mitigation identified by the staff and unrefuted  
5     in the record, this project has no certainty,  
6     which is what you're aim is, is to provide  
7     certainty to the project.

8             The purpose of the Commission is to  
9     fully mitigate the CEQA-identified impacts of its  
10    staff, which provides certainty to the applicant,  
11    because the decision meets the requirements of the  
12    Warren-Alquist Act, and CEQA, and is therefore  
13    unchallengeable in a court of law. That is the  
14    certainty financial institutions are looking for.

15            They're not worried about a couple extra  
16    million dollars for air quality. They want a  
17    decision that will hold up in court and not be  
18    challenged so that they have certainty that they  
19    will be repaid.

20            And so, what I'm urging you to do is to  
21    adopt staff's mitigation proposal, their original  
22    proposal that provides that certainty that you  
23    want to give to the Applicant. It also provides  
24    the CEQA mitigation that the record reflects is  
25    necessary.

1           And, you know, the Commissioners  
2   probably wonder why the staff is so adamant about  
3   staff's mitigation, well -- as you can see from my  
4   handout, and I've mentioned before -- we have  
5   three plants to worry about not just one. It's  
6   always been about the three.

7           And we're perfectly willing to accept  
8   this plant if it's fully mitigated, not by the  
9   Applicant's terms, but by the terms of the record  
10   provided by the staff, and I mentioned before, 175  
11   tons and 50 tons of PM-10.

12           So, if you can provide that, I think the  
13   public's willing to accept this plan. We would  
14   also like to have our fire department money, but  
15   essentially, the most important thing is that the  
16   air quality mitigation be dealt with.

17           So, another matter the public is  
18   concerned with is the Applicant's poor safety  
19   record. We talked about that. And the lack of  
20   defined mitigation for our fire department. You  
21   know, we're going to have a fire station located  
22   less than three miles away from this project.

23           You granted us \$500,000 in the errata,  
24   and then you took it away. I consider that a  
25   significant change to the decision, which is why I

1 filed the motion to have a public meeting on that.

2 And then, in the second amendment to the  
3 errata you said that they don't have to fully  
4 mitigate the project, they don't have to provide  
5 additional mitigation if they can't prove that  
6 they fully mitigated the project. Again, I  
7 consider that a substantial revision that should  
8 be subject to a public meeting.

9 So, in any event, their record hardly  
10 instills confidence of the public, that they can  
11 operate a safe facility. And because of the  
12 notices of violation we're extremely worried that  
13 this Applicant can't live up to the conditions  
14 that you'll be putting upon him.

15 And we're worried about the compliance  
16 issue, because we feel that the CEC is not being  
17 kept in the loop. And I think these NOV's, and my  
18 conversations with CEC staff members, to me is of  
19 grave concern.

20 We're worried about our health and  
21 safety, and we're worried about our air quality,  
22 and we think there's ways that this decision could  
23 be properly advanced, and we could deal with all  
24 these issues. And we're not saying we don't want  
25 the plant, we just want it fully mitigated.

1           And I'm sorry that I'm a little bit off  
2   today, but thank you.

3           CHAIRPERSON KEESE: Thank you, Mr.  
4   Sarvey.

5           COMMISSIONER PERNELL: Thank you.

6           CHAIRPERSON KEESE: Do we have any other  
7   members of the public that wish to speak to this  
8   issue at this time? Staff?

9           MS. DE CARLO: Thank you, Chairman and  
10   Commissioners. Lisa De Carlo, staff counsel.  
11   Staff appreciates the time and effort the  
12   Committee has put into the proposed decision and  
13   the various errata.

14           While the revised AQSC5 is not what  
15   staff recommended, the Committee did base it's  
16   decision on evidence in the record, and staff is  
17   fully prepared to implement and enforce this  
18   condition, along with all the others contained in  
19   the Commission decision.

20           CHAIRPERSON KEESE: Thank you.  
21   Applicant?

22           MR. WHEATLAND: Thank you, Chairman  
23   Keese and Commissioners. I'm pleased to state  
24   today that the Applicant supports the Presiding  
25   Members Proposed Decision, as modified by the

1 supplemental errata.

2 We'd like to note, just for the record,  
3 that your memo of May 23rd, 2003, to the  
4 Commission, had identified the project Applicant  
5 as Calpine Seastar Power, and we've asked that the  
6 Providing Member's Proposed Decision reflect the  
7 Applicant as the East Altamont Energy Center, LLC.

8 We have listened carefully to the  
9 comments made today by the Intervenors and the  
10 public. The Applicant does not believe that there  
11 are any new arguments or new information that have  
12 been raised here today that are not already  
13 adequately addressed by the Presiding Member's  
14 Proposed Decision, and by the record of this  
15 proceeding.

16 Mr. Gary Rubenstein is here this  
17 morning, and is available to answer any questions  
18 that you may have with respect to any of the air  
19 quality issues that have been raised. Also with  
20 me here today is Mr. Mike Hatfield, who is the  
21 Project Manager for this project, and he'd like to  
22 briefly address you.

23 CHAIRPERSON KEESE: Briefly.

24 MR. HATFIELD: Briefly, thank you. I  
25 just noted Commissioner Keese's comment noting the

1     patience of all the parties, and I'd like to thank  
2     the Commissioners for their patience in dealing  
3     with these complex issues.

4             I think what has been put forward meets  
5     pretty high environmental standards, but the terms  
6     are also clear, and we appreciate that. Thank  
7     you.

8             CHAIRPERSON KEESE: Thank you very much.  
9     Do we have any comments from the Commissioners?

10            COMMISSIONER GEESMAN: I have a question  
11     for Mr. Rubenstein. The Committee has said that  
12     the impacts from the plant will be fully mitigated  
13     for the life of the project based on the programs  
14     to be funded by the payment of the Applicant to  
15     the San Joaquin District. I presume you agree  
16     with that?

17            MR. RUBENSTEIN: Based on the mitigation  
18     measures that are contained in the menu, if you  
19     will, of programs that we're looking at, with the  
20     additional condition that's been placed on there  
21     by the Committee.

22            And with the additional assurances from  
23     the San Joaquin Air District, I believe that, yes,  
24     they will be able to satisfy that requirement.

25            COMMISSIONER GEESMAN: For the life of



1 the project?

2 MR. RUBENSTEIN: Yes.

3 COMMISSIONER GEESMAN: A question for  
4 the San Joaquin District, Mr. Chairman?

5 CHAIRPERSON KEESE: Thank you.

6 COMMISSIONER GEESMAN: I take it you  
7 agree with that conclusion as well?

8 MR. SWANEY: Yes, we do.

9 COMMISSIONER GEESMAN: A question for  
10 the staff, Mr. Chairman?

11 Recognizing that you did put forward an  
12 alternative recommendation earlier in the  
13 Committee's proceedings, and that that  
14 recommendation was not adopted by the Committee,  
15 do you have a view as to whether the impacts of  
16 the project will be mitigated for the full life of  
17 the project?

18 MS. DE CARLO: We believe that there is  
19 evidence in the record on which the Committee can  
20 rely to come to that conclusion.

21 COMMISSIONER GEESMAN: Thank you.  
22 That's all I had, Mr. Chairman.

23 COMMISSIONER BOYD: Mr. Chairman?

24 CHAIRPERSON KEESE: Mr. Boyd.

25 COMMISSIONER BOYD: Well I've restrained

1 from saying things earlier because I wanted to  
2 hear what everybody had to say on this subject,  
3 and I very much appreciate Commissioner Geesman's  
4 questions. They duplicated some that I would have  
5 asked had he not got there first.

6 And as many people in the audience know,  
7 I've devoted more than 25 years of my life to air  
8 quality, and I much appreciate the concerns of Mr.  
9 Boyd and Mr. Sarvey.

10 I'm sorry that we got off on this  
11 tangent earlier today with this feeling that ERC's  
12 were even in the equation, because I remember the  
13 last hearing quite well, and it was predominately  
14 the San Joaquin Valley District arguing that they  
15 wouldn't accept ERC's because they weren't as  
16 protected.

17 So that option was not offered, even  
18 though it was an option that could have been  
19 offered -- they weren't as protective as the  
20 agreement that they had entered into the Applicant  
21 with. And we just had quite a discussion around  
22 that issue.

23 But I didn't think that was ever a real  
24 option. I have a lot of faith in the two  
25 Committee members here, my peers up here, with

1     regards to their concerns about the environment  
2     and people's health, and I do know that the first  
3     line of defense for the citizens of the  
4     San Joaquin Valley is the San Joaquin Valley Air  
5     Pollution Control District.

6             And the first line of defense for the  
7     citizens of Tracy is the actions of that district.  
8     And when that, when not only the district staff  
9     but the district itself agrees to an agreement to  
10    protect the public health of the people of the  
11    district and Tracy, it weighs heavily on my mind  
12    in terms of what is necessary or not necessary.

13            I don't want to get into a debate about  
14    whether our metrics in CEQA or not, with regard to  
15    which we could measure whether or not the issues  
16    are being mitigated, the staff is an excellent  
17    staff, and made their best estimate of what it  
18    might take, and the Committee I see dealt with  
19    that issue and dealt with the District, and has  
20    come up with what they think is protective.

21            It's my understanding, and I would  
22    invite Mr. Rubenstein to come back up if I'm  
23    incorrect in my statement here, that, at the last  
24    hearing, it was pretty well laid out that the  
25    estimates of the amount of emissions to be

1 mitigated were extremely conservative, they were  
2 almost double from what one might analyze.

3           So I think there was a very large degree  
4 of conservatism built in to protect the citizens.  
5 The amount of money we heard today was at the high  
6 end of the range and therefore it's quite possible  
7 that even more can be obtained with that money  
8 than just the 66 thousand-plus tons that are  
9 referenced.

10           And it just seems to me that the  
11 Committee went to substantial measures and means  
12 to try to be overly protective, and to ensure that  
13 people's health indeed would be protected.

14           Finally, in looking at approaches that  
15 could be taken, and to the gentleman from the City  
16 Council, I would say that, based on my experience  
17 and my crude analysis of things, the early action  
18 that this payment of money is going to allow, and  
19 the, you know, fairly significant amount of  
20 emissions and reductions that can be purchased and  
21 obtained now, versus a straight line approach over  
22 the life of the project.

23           The front-end benefits may more than  
24 outweigh any deficit that one might plot on the  
25 far end of the scale, and now we've had everyone

1 say that they think all of the emissions are  
2 mitigated, so I feel even better about the fact.

3 So, in spite of the misunderstandings  
4 and the concerns -- which I do share -- about  
5 protecting other people's health, I do feel,  
6 personally, that what the Committee is  
7 recommending and what everyone here has conceded  
8 to today, is going to be more than protective of  
9 the public health of the people in that district.

10 And I think the Committee went the extra  
11 mile in going beyond the law in trying to protect  
12 the public health of people. So I will support  
13 the Committee's action.

14 CHAIRPERSON KEESE: Thank you.

15 COMMISSIONER PERNELL: Mr. Chairman?

16 CHAIRPERSON KEESE: Commissioner  
17 Pernell.

18 COMMISSIONER PERNELL: Mr. Chairman, let  
19 me start out by saying I do appreciate the  
20 community's involvement in this case. And I'm no  
21 stranger to Tracy, having been the Presiding  
22 Member on GWF. And so it is good to see that we  
23 have an active community that are concerned about  
24 what goes in to their community.

25 On this particular proposed project I

1 took great interest in knowing that the community  
2 will not let the Applicant, staff, or this  
3 committee just go in and make a decision and  
4 leave. So a lot of care was taken to the issues,  
5 and I think that's a indication of why this  
6 proposed Decision that the Committee has before  
7 the Presiding Member has taken so long.

8           One of the things -- I would concur with  
9 Commissioner Boyd -- is that one of the things  
10 that we were concerned about, given some of the  
11 Intervenors, either relatives or direct  
12 Intervenors health conditions in terms of  
13 respiratory problems that the air quality portion  
14 had a good record and that was addressed.

15           And I would agree that getting relief  
16 now, getting relief from whatever the menu is --  
17 and I understand that menu is long -- and I would  
18 want the, our staff, to make sure, in terms of  
19 compliance, that all of those things happen.

20           It's more beneficial to Tracy, the Tracy  
21 community, than some long-range plan, or buying  
22 some credits. I know the Committee with GWF kind  
23 of got beat up because of the air quality issue,  
24 and perhaps getting credits from as far as  
25 Bakersfield.

1           So, in my opinion, the committee did,  
2   with this decision, with this Revised Presiding  
3   Members Proposed Decision, did a good job, as much  
4   as possible, to ensure that that community air  
5   quality issues -- and others, but specifically air  
6   quality -- was being mitigated not ten years from  
7   now, but now.

8           And I think that that's what this  
9   decision does. So, Mr. Chairman, I'm prepared, if  
10   this is the time, to make a motion.

11           CHAIRPERSON KEESE: Is there any other  
12   public comment? Now is the time for the motion.

13           COMMISSIONER PERNELL: Mr. Chairman, I  
14   would move approval of the Revised Presiding  
15   Member's Proposed Decision, and the supplemental  
16   errata.

17           CHAIRPERSON KEESE: Motion, Commissioner  
18   Pernell.

19   (Thereupon, the motion was moved.)

20           COMMISSIONER BOYD: Second.

21           CHAIRPERSON KEESE: Second Commissioner  
22   Boyd.

23   (Thereupon, the motion was seconded.)

24           Further discussion? All in favor.

25           (Ayes.)

1                   Opposed? Adopted four to nothing.

2           Thank you, everyone. And thank you --

3                   COMMISSIONER PERNELL: Commissioner

4           Laurie!

5           (laughter)

6                   I am not going to let you get away.

7                   CHAIRPERSON KEESE: Point of personal

8           privilege.

9                   COMMISSIONER PERNELL: Point of personal

10          privilege. Thank you, Mr. Chairman, I just wanted

11          to recognize a friend and colleague and former

12          member of this Commission, Commissioner Robert

13          Laurie. Let's give him a hand. I'm surprised you

14          came back to the lion's den, but it's good to see

15          you.

16                  CHAIRPERSON KEESE: Commission Committee

17          and Oversight. Any discussion? Seeing none.

18                  Chief Counsel's Report?

19                  MS. TACHERA: Yes, sir. Roberta's

20          passing out Chief Counsel's --. Okay. Good

21          morning, Jennifer Tachera, Chief Counsel's Office.

22          I'm passing out the August Chief Counsel's Report

23          on interventions before the PUC and FERC. And I

24          have a brief commentary if you like.

25                  CHAIRPERSON KEESE: Thank you. This is



1 something we sort of let slip for awhile?

2 MS. TACHERA: There was a report in  
3 June. Yes. Our sister agency has been quite  
4 active. I would say that the procurement  
5 proceeding is probably the most significant one  
6 now before the PUC.

7 We've just concluded the fourth week of  
8 evidentiary hearings in the general procurement  
9 phase. We have opening briefs due September 12th,  
10 reply briefs due September 19th. CEC submitted  
11 both direct and rebuttal testimony, quite  
12 extensive.

13 CEC also joined with ORA, Turn, and the  
14 three IOU's in a joint recommendation for a  
15 resource adequacy framework. It's been, the judge  
16 in this proceeding, ALF Walwyn, has been quite  
17 receptive to this. And there will be workshops  
18 from now until the end of the year on certain  
19 aspects of this joint recommendation.

20 In Energy Efficiency there are actually  
21 three proceedings. What we call sort of the over-  
22 arching proceeding, we've submitted comments about  
23 the scope and direction, and also comments about  
24 the sort of mini-issue of community choice  
25 aggregators, and where they stand as far as being

1 third-party providers.

2           There is a solicitation that's being  
3 developed by the PUC for the 2004-2005 energy  
4 proposals. I've already alerted staff that that  
5 has a September 23rd deadline, so if we are  
6 considering a proposal, that's the deadline that  
7 we're looking at.

8           In connection with the natural gas R&D  
9 proceeding, we submitted direct testimony by  
10 Michael DeAngelis, urging that the PUC increase  
11 the amount of funding for natural gas R&D, and  
12 also consider transferring the program from the  
13 utilities to this Commission.

14           Finally, in several other proceedings --  
15 the LEV proceeding, we're waiting for a decision.  
16 There's no alternate that's yet been proposed.  
17 The PUC has their business meeting tomorrow, so  
18 it's possible that the current decision will be  
19 once again postponed in view of an alternate.

20           And in connection with PG&E's general  
21 rate case, we're waiting for a decision to be made  
22 about the Diablo Canyon independent safety  
23 committee. So, that's generally where we are.

24           CHAIRPERSON KEESE: Thank you.

25 Commissioner Geesman?

1 COMMISSIONER GEESMAN: Thank you.

2 Jennifer, with respect to R0108028, the energy  
3 efficiency policies matter?

4 MS. TACHERA: Yes.

5 COMMISSIONER GEESMAN: Could you send my  
6 office a copy of the July 3rd Commissioner's  
7 Ruling, and our comments thereon?

8 MS. TACHERA: Certainly.

9 COMMISSIONER GEESMAN: Thank you.

10 CHAIRPERSON KEESE: Any other comments?  
11 Then I'll skip back to approval of the minutes  
12 from the August 6th, 2003 Business Meeting.  
13 Commissioner Boyd?

14 COMMISSIONER BOYD: Mr. Chairman, I  
15 would like to seek a correction to the minutes as  
16 drafted. They show me absenting myself at the end  
17 of the consent calendar, but I believe I stayed  
18 through item number two, which was the geothermal  
19 issue that we also discussed today. So, I do want  
20 the record to be correct.

21 CHAIRPERSON KEESE: Thank you. With  
22 that amendment, is that a motion, is that a motion  
23 to --

24 COMMISSIONER BOYD: I also move as  
25 amended.

1                   CHAIRPERSON KEESE: Motion, Commissioner  
2   Boyd.

3   (Thereupon, the motion was moved.)

4                   COMMISSIONER GEESMAN: Second.

5                   CHAIRPERSON KEESE: Second, Commissioner  
6   Geesman.

7   (Thereupon, the motion was seconded.)

8                   All in favor?

9                   (Ayes.)

10                  Opposed? Approved four to nothing.  
11 Chief Counsel's Report, that was it? Do we have  
12 anything to add to that?

13                  MR. BLEES: That's all we have today,  
14 sir.

15                  CHAIRPERSON KEESE: Thank you.  
16 Executive Director's Report?

17                  MR. THERKELSON: Good morning,  
18 Commissioners. First of all, I'd like to thank  
19 Bill Taylor for rapidly getting the microphones  
20 fixed, and also folks in business services for  
21 cleaning up your meeting rooms, so now you can go  
22 in there without having to trip over everything,  
23 and have an actual place to sit down.

24                  I would like to take about 15 minutes  
25 with you after this meeting is over with, up in

1 the third floor conference room, to discuss the  
2 work plans, and give you a brief overview of where  
3 we are on that, if that's acceptable?

4 CHAIRPERSON KEESE: That will be the  
5 order as we adjourn here. Public Advisor's  
6 Report?

7 MS. MENDONCA: Thank you, Chairman  
8 Keese. Nothing specific this morning.

9 CHAIRPERSON KEESE: Do we have any  
10 public comment? Hearing none, this meeting is  
11 adjourned in subject to our meeting in open forum  
12 on third floor conference room for a discussion of  
13 work plans.

14 (Thereupon, the meeting was adjourned to  
15 at 11:49 a.m.)

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## CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Business Meeting; that it was  
thereafter transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
meeting, nor in any way interested in outcome of  
said meeting.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 26th day of August, 2003.

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